

1
2
3
4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6
7 TOMAHAWK MANUFACTURING, INC.,
et al.,

Case No. 2:23-cv-01007-APG-NJK

8 Plaintiff(s),

Order

9 v.
10 SPHERICAL INDUSTRIES, INC., et al.,
11 Defendant(s).

[Docket No. 474]

12 Attorney Stephen Healey is unable or unwilling to comply with the basic requirements
13 applicable to federal litigation. In his latest lapse, Attorney Healey filed an emergency motion to
14 modify the protective order 45 hours before a hearing in the Central District of California, a hearing
15 that would apparently benefit from resolution of this motion in this District. While the Court in
16 no way seeks to hold up proceedings in another federal courthouse, the Court cannot countenance
17 the continued disregard of basic procedural rules. Accordingly, the Court declines to resolve this
18 motion on an emergency basis. The pending motion will be briefed and decided in the ordinary
19 course.

20 **I. BACKGROUND**

21 This case involves claims for alleged trade secret misappropriation. *See, e.g.*, Docket No.
22 309 (amended complaint). On September 20, 2023, the Court entered a protective order governing
23 the confidential treatment of certain discovery materials. Docket Nos. 103, 105. The protective
24 order permits the filing of motions for modification in accordance with standard procedural
25 requirements. Docket No. 105 at 13.

26 On December 3, 2024, Defendants filed an emergency motion to modify the protective
27 order. Docket No. 422. The next day, on December 4, 2024, the Court denied that motion for
28 failing to comply with the discovery rules regarding prefiling conferrals. Docket No. 423 at 1.

1 The Court also noted further deficiencies, including that the motion was improperly filed on an
 2 emergency basis without sufficient justification, *see id.* at 1-2, and that the papers were “rambling
 3 and difficult to follow, veering from one tangential issue to the next,” *id.* at 1 & n.1.

4 On December 17, 2024, Defendants filed a second emergency motion to modify the
 5 protective order. Docket No. 440. Later that same day, on December 17, 2024, the Court denied
 6 that motion for again failing to comply with the discovery rules regarding prefiling conferrals.
 7 Docket No. 444 at 1. The Court required counsel to take prompt action and to hold the required
 8 conference by 5:00 p.m. on December 20, 2024. *Id.* at 2.

9 More than a month later, on January 23, 2025, Defendants filed a third emergency motion
 10 to modify the protective order. Docket No. 452. The next day, on January 24, 2025, the Court
 11 denied that motion for failing to comply with the requirements for seeking emergency relief, failing
 12 to include pertinent points and authorities, and failing to show service of the motion had been made
 13 on opposing counsel. Docket No. 454 at 1-3. The Court expressed particular concern that another
 14 emergency motion had been filed without sufficient justification, despite the Court’s identification
 15 months earlier of the same deficiency. *Id.* at 2.

16 On March 4, 2025, Chief United States District Judge Andrew P. Gordon rebuffed
 17 Defendants’ efforts to sidestep the requirements for seeking to modify the protective order:

18 The defendants have identified deadlines in other cases that may be
 19 impacted by the fact that I am giving both sides additional time to
 20 justify sealing in this case. If the defendants need information that
 21 is still subject to sealing in this case for use in another case, then
 22 they should review Magistrate Judge Koppe’s rulings on their
 23 various motions to modify the protective order and file a proper
 24 motion for her consideration instead of attempting to bypass her
 25 with this motion.

26 Docket No. 467 at 6. Hence, Defendants have had ample notice of the need to file a proper motion
 27 to modify the protective order, but more weeks of inaction followed.

28 On March 25, 2025, Defendants filed a stipulation on their discovery dispute in the
 29 identified case pending in the Central District of California. *See Spherical Industries, Inc. v.*
Alejandro S. Angulo, Case No. 8:24-cv-00932-MCS-ADS, Docket No. 50 (C.D. Cal. Mar. 25,

1 2025) (notice of motion).¹ That discovery dispute was calendared for a hearing at 10:00 a.m. on
 2 April 16, 2025, before United States Magistrate Judge Autumn D. Spaeth. *See id.* at 1. Hence,
 3 this hearing has been known to Defendants for three weeks. In the subject papers, Attorney Healey
 4 represented that he was taking action to tee up his request to modify the protective order in this
 5 courthouse: “*Concurrent* with opposing the defense motion to compel here, the undersigned
 6 anticipates seeking leave of Court in Nevada for a Fifth [sic] time to be relieved and/or modify the
 7 Nevada protective order there.” *Angulo*, Docket No. 51 at 7 (C.D. Cal. Mar. 25, 2025) (emphasis
 8 added); *see also Angulo*, Docket No. 51 at 9 (“Plaintiffs intend to file a Fifth [sic] request of the
 9 Nevada Magistrate [sic] to modify the protective [o]rder”). Despite those representations made on
 10 March 25, 2025, no such motion was filed concurrently in this courthouse.

11 Instead, Defendants waited another 20 days to file a fourth emergency motion to modify
 12 the protective order at 12:45 p.m. on April 14, 2025. Docket No. 474 (notice of electronic filing).
 13 Defendants seek emergency relief of that motion precisely because they waited so long to file the
 14 motion, while indicating that its resolution is needed for the now imminent hearing before Judge
 15 Spaeth in the Central District. *See, e.g.*, Docket No. 474 at 1, 6. To repeat, this hearing was noticed
 16 for that date and time three weeks ago, on March 25, 2025. Defendants also fail to explain why
 17 this motion was not filed sooner after the denial of the third motion to modify in January, Docket
 18 No. 454, or Chief Judge Gordon’s directive to file a proper motion in the beginning of March.
 19 Docket No. 467 at 6. This fourth emergency motion is the motion currently before the Court.

20 **II. STANDARDS**

21 “The filing of emergency motions is disfavored because of the numerous problems they
 22 create for the opposing party and the court resolving them.” *Cardoza v. Bloomin’ Brands, Inc.*,
 23 141 F. Supp. 3d 1137, 1140 (D. Nev. 2015) (citing *in re Intermagnetics America, Inc.*, 101 B.R.
 24 191, 193-194 (C.D. Cal. 1989)). “Safeguards that have evolved over many decades are built into
 25 the Federal Rules of Civil Procedure and the Local Rules of this court.” *Mission Power Eng’g Co.*
 26
 27

28 ¹ The Court takes judicial notice of filings in its sister federal court. *See, e.g., Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

1 *v. Continental Cas. Co.*, 883 F. Supp. 488, 491 (C.D. Cal. 1995).² A request to bypass the default
 2 procedures through the filing of an emergency motion impedes the adversarial process, disrupts
 3 the schedules of the Court and opposing counsel, and creates an opportunity for bad faith
 4 gamesmanship. *Cardoza*, 141 F. Supp. 3d at 1140-41. As a result, the Court allows motions to
 5 proceed on an emergency basis in only very limited circumstances. *See, e.g.*, Local Rule 7-4(b)
 6 (“Emergency motions should be rare”).

7 In addition to various technical requirements, *see* Local Rule 7-4(a), parties seeking
 8 emergency relief must satisfy several substantive requirements. When a party files a motion on
 9 an emergency basis, it is within the sole discretion of the Court to determine whether any such
 10 matter is, in fact, an emergency. Local Rule 7-4(c); *see also* Local Rule 26-7(d). Generally
 11 speaking, an emergency motion is properly presented to the Court only when the movant has
 12 shown (1) that it will be irreparably prejudiced if the Court resolves the motion pursuant to the
 13 normal briefing schedule and (2) that the movant is without fault in creating the crisis that requires
 14 emergency relief or, at the very least, that the crisis occurred because of excusable neglect.
 15 *Cardoza*, 141 F. Supp. 3d at 1142 (citing *Mission Power*, 883 F. Supp. at 492). If there is no
 16 irreparable prejudice, sufficient justification for bypassing the default briefing schedule does not
 17 exist and the motion may be properly decided on a non-expedited basis. *Cardoza*, 141 F. Supp.
 18 3d at 1142-43. If there is irreparable prejudice but the movant created the crisis, the Court may
 19 simply deny the relief sought. *Id.* at 1143. The relevant inquiry is not whether the opposing party
 20 was at fault with respect to the underlying dispute, but rather “[i]t is the creation of the crisis—the
 21 necessity for bypassing regular motion procedures—that requires explanation.” *Mission Power*,
 22 883 F. Supp. at 493. Quite simply, emergency motions “are not intended to save the day for parties
 23 who have failed to present requests when they should have.” *Intermagnetics America*, 101 B.R.
 24
 25

26 ² This Court’s decision in *Cardoza* relies extensively on the cornerstone decisions from the
 27 Central District by United States Magistrate Judge Elgin C. Edwards and later-elevated United
 28 States District Judge Pamela A. Rymer. The case law in the Central District refers to “ex parte”
 motions, which judges in this District refer to as “emergency” motions. *See Cardoza*, 141 F. Supp.
 3d at 1140 n.3.

1 at 193; *see also* Local Rule 7-4(b) (“[The] failure to effectively manage deadlines, discovery, trial,
 2 or any other aspect of litigation does not constitute an emergency”).

3 **III. ANALYSIS**

4 As noted above, emergency motions require a showing that “the movant is without fault in
 5 creating the crisis that requires emergency relief or, at the very least, that the crisis occurred
 6 because of excusable neglect. *Cardoza*, 141 F. Supp. 3d at 1142 (citing *Mission Power*, 883 F.
 7 Supp. at 492). Defendants have been put on notice for months of the need to file a proper motion
 8 to modify the protective order. *See, e.g.*, Docket No. 454. As recently as March 4, 2025, Chief
 9 Judge Gordon issued a clear order of the need to file such a motion, Docket No. 467 at 6, but
 10 Defendants sat on their hands. Making matters worse, Defendants now point to an imminent
 11 hearing in another courthouse as justifying emergency relief, but Defendants have known about
 12 that hearing for at least 20 days. And, yet, Defendants waited to file this motion until it is too late
 13 to obtain responsive briefing and for judicial review of the matter.³ Quite plainly, Defendants are
 14 at fault in creating the exigent circumstance for which they seek emergency review, which defeats
 15 that request.

16 **IV. REMEDIAL ACTION**

17 When attorneys prove to be unequipped to practice law in federal court, it is appropriate
 18 for the Court to require them to take action to become prepared. *See, e.g.*, *4 Exotic Dancers v.*
19 Spearmint Rhino, 2009 U.S. Dist. Lexis 9841, at *1-2 n.1 (C.D. Cal. Jan. 29, 2009). In light of the
 20 circumstances here, the Court **ORDERS** Attorney Stephen Healey to read the following decisions
 21 in their entirety: *Cardoza v. Bloomin' Brands, Inc.*, 141 F. Supp. 3d 1137, 1140 (D. Nev. 2015);
22 Mission Power Eng'g Co. v. Continental Cas. Co., 883 F. Supp. 488, 491 (C.D. Cal. 1995); *in re*
23 Intermagnetics America, Inc., 101 B.R. 191, 193-194 (C.D. Cal. 1989). Attorney Stephen Healey
 24 must file a declaration attesting to having complied with this order by April 28, 2025.

25
 26
 27 ³ Given the circumstances, it is unclear if Defendants actually want this issue to be resolved
 28 or if they simply want to tell a judge in another District that they have attempted to obtain
 resolution without success.

1 V. CONCLUSION

2 Accordingly, the Court declines to address the pending motion in an expedited manner.
3 The motion will be briefed and decided in the ordinary course. As it appears counsel in the
4 identified case pending in the Central District are interested parties regarding this issue, the Clerk's
5 Office is **INSTRUCTED** to email a copy of this order to Kevin H. Brogan
6 (kbrogan@hillfarrer.com) and William A. Meyers (wmeyers@hillfarrer.com). As explained in
7 Section IV, Attorney Stephen Healey must file a declaration in compliance with this order by April
8 28, 2025.

9 IT IS SO ORDERED.

10 Dated: April 14, 2025

11 
12 Nancy J. Koppe
United States Magistrate Judge

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28